The Corporation of the Town of South Bruce Peninsula

By-Law Number 91-2017

Being a By-Law to Authorize the Mayor and Clerk to Sign a Site Plan Control Agreement with Redhawk Construction Co. Ltd. for Pt Lt 21, Con 5 WBR Albemarle Pt 1 3R1820; South Bruce Peninsula PIN 33132-0070 (LT)

Whereas Section 8 of the Municipal Act, 2001, Chapter 25, as amended, provides that Section 8 shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

And whereas Section 9 of the Municipal Act, 2001, Chapter 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

And whereas Section 41 of the Planning Act, RSO 1990, Chapter P13 makes provision for site plan control;

And whereas a site plan control agreement has been negotiated with Redhawk Construction Co. Ltd. for property known as Pt Lt 21, Con 5 WBR Albemarle Pt 1 3R1820; South Bruce Peninsula PIN 33132-0070 (LT).

Now therefore the Council of the Corporation of the Town of South Bruce Peninsula enacts as follows:

1) That the Mayor and Clerk are hereby authorized to sign the site plan control agreement with Redhawk Construction Co. Ltd.

2) That such changes as are considered to be minor in nature or which do not materially change the development will be permitted to be made to the site plan control agreement without amendment to this by-law.

3) That the site plan control agreement as referred to herein shall be attached hereto and form part of this by-law.

Read a first and second time this 17th day of October, 2017.

[Signatures]

Mayor

Clerk
Read a third time and finally passed this 17th day of October, 2017.

[Signatures]

Mayor
Clerk
Between

Redhawk Construction Co. Ltd.
(the "Owner")

And

The Corporation of the Town of South Bruce Peninsula
(the "Town")

Whereas the Owner is the Owner of the lands described on Schedule “A” attached hereto (the “lands”);

And whereas the Town has passed By-Law 60-2017 (an amendment to the Comprehensive Zoning By-Law for the Town of South Bruce Peninsula) on the 20th day of June, 2017 to permit a resort residential special use;

And whereas By-Law 60-2017 designates the lands as being subject to Site Plan Control pursuant to Section 41 of the Planning Act of Ontario;

And whereas under a condition of Consents B-27-17.59, B-28-17.59 and B-29-17.59 of the County of Bruce, the Owner is required to enter into a Site Plan Control Agreement to address the mitigation requirements of the Environmental Impact Statement Report as they pertain to the lands;

And whereas the Owner has submitted to the Town the Environmental Impact Statement Report, drawings establishing building envelopes and a stewardship brochure, all commissioned by the Owner;

And whereas Subsection 41(10) of the Planning Act permits the registration of this Agreement against the lands to which it applies.

Now therefore in consideration of the premises and other good and valuable consideration, the receipt and sufficiency whereof the parties irrevocably acknowledge, the parties agree as follows:

1. The Owner agrees to construction only within the established building envelopes, in substantial conformity with the Site Plan included in Schedule “B” to this Agreement.

2. The Owner agrees to comply with any and all provisions of any Building Permit issued by the Town to the Owner with respect to the construction on the lands in accordance with the Site Plan Agreement.

3. The Owner hereby agrees to the special conditions as set forth in Schedule “D”

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Redhawk Construction Co. Ltd.
October 17, 2017
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attached hereto and forming part of this Agreement.

4. The Owner hereby agrees and will expediently cause to be paid to the Town, any and all fees, deposits or other such consideration as is deemed necessary by the Town for the fulfillment of this Agreement. Said fees, deposits or other consideration is set forth in Schedule “C” attached hereto and forming part of this Agreement.

5. The Owner hereby agrees that this Agreement, together with any schedules thereto, will be registered upon title to the lands. The covenants, agreements, conditions and undertakings herein contained on the part of the Owner shall run with the lands and shall be binding upon it, its successors and assigns as owners and occupiers from time to time and this covenant shall be to the benefit of the Town and its lands and highways appurtenant and adjacent to the lands. The Owner further covenants and agrees to pay to the Town the cost of registration of this Agreement, as well as any further costs incurred by the Town as a result of the registration of any other documents pertaining to this Agreement.

6. The Owner acknowledges that the Town, in addition to any other remedy it may have at law, shall also be entitled to enforce this Agreement in accordance with Section 446 of the Municipal Act, 2001.

7. Nothing in this Agreement shall relieve the Owner from compliance with all applicable municipal by-laws, laws, statutes, regulations, notices or other policies or laws and/or regulations established by any other governmental body that may have jurisdiction over the lands.

8. Every provision of this Agreement by which the Owner is obligated in any way shall be deemed to include the words “at the expense of the Owner” unless the context otherwise requires, including the payment of any and all applicable taxes.

9. References herein to any by-law, law, policy, regulation, statute or any provision thereof include such by-law, law, policy, regulation, statute or provision thereof as amended, revised, re-enacted and/or consolidated from time to time and any successor statute thereto.

10. The Owner and the Town agree that all covenants and conditions contained in this Agreement shall be severable, and that should any covenant or condition in this Agreement be declared invalid or unenforceable by a court of competent jurisdiction, the remaining covenants and conditions and the remainder of the Agreement shall remain valid and not terminate thereby.

11. The failure of the Town at any time to require performance by the Owner of any obligation under this Agreement shall in no way affect its right thereafter to enforce such obligation, nor shall the waiver by the Town of the performance of
any obligation hereunder be taken or be held to be a waiver of the performance of the same or any other obligation hereunder at any later time. The Town shall specifically retain its rights at law to enforce this Agreement.

12. All plans, diagrams and brochures attached to this Agreement as a schedule or referred to in this Agreement the Owner warrants are accurate as to all dimensions, provisions and other matters shown thereon and information included therein. In the event that any material misrepresentation, whether accidental or otherwise is found to exist and which on reasonable grounds has prejudiced or compromised the Town’s position, then the Owner shall be required, at its expense to resolve all matters. Failing this, the Town may rectify the situation at the Owner’s expense. For the above reasons, the Owner acknowledges the importance of having reliable and accurate plans, diagrams and brochures and that the Town is relying upon them and is entering into this Agreement on that basis.

13. The parties covenant and agree with each other not to call into question or challenge, directly or indirectly, in any proceeding or action in court, or before any administrative tribunal, the party’s right to enter into and enforce this Agreement. The law of contract applies to this Agreement and the parties are entitled to all remedies arising from it, notwithstanding any provision in s. 41 of the Planning Act interpreted to the contrary.

14. This Agreement shall be binding on all successors, assigns or heirs.

15. This Agreement shall be interpreted under and be governed by the laws of the Province of Ontario.

16. The parties hereto hereby agree that such changes as may be required to the Agreement, Site Plan or any documentation thereto may be made without the requirement to return for Council approval provided that the changes are minor in nature and do not constitute a substantial material change from that originally approved by Council. Any such changes which may be made are hereby agreed to be binding on the parties hereto, their successors, heirs and assigns.

The parties hereto must agree with the changes to the Agreement and said agreement will be in writing and signed by the parties hereto.

It shall be the responsibility of anyone seeking particularization of minor modifications to determine same from the Town.

17. Any notice required or permitted to be given pursuant to the provisions of this Agreement may be given personally or shall be mailed to each party at the address hereinafter set out. If mailed, by ordinary prepaid first class post, it shall be deemed to have been received on the fourth day after it is postmarked.
To the Owners at: Redhawk Construction Co. Ltd.
7735 Kennedy Road South
Brampton ON L6W 0B9

To the Town at: Town of South Bruce Peninsula
PO Box 310, 315 George Street
Wiarton ON N0H 2T0

In witness whereof the Owner and the Town have executed this Agreement by its officers duly authorized in that behalf.

The Corporation of the Town of South Bruce Peninsula
Per:

Janice Jackson
Oct 17, 2017

Angela Cathrae, Clerk
Oct 17, 2017

We have the authority to bind the Corporation.

The Owner
Redhawk Construction Co. Ltd.
Per:

Witness

R.W. Rice

Date

I have the authority to bind the Corporation.
Schedule “A”

to the Site Plan Control Agreement dated the 17th day of October, 2017 between Redhawk Construction Co. Ltd. and The Corporation of the Town of South Bruce Peninsula

Legal Description

Pt Lt 21, Con 5 WBR Albemarle Pt 1, 3R1820; South Bruce Peninsula as described in PIN 33132-0070 (LT)

Municipally known as 85 Hea Road

Roll Number 41-02-590-003-15704

Subject to County of Bruce Consent B-28-17.59
Schedule “B”

to the Site Plan Control Agreement dated the 17th day of October, 2017 between Redhawk Construction Co. Ltd. and The Corporation of the Town of South Bruce Peninsula

The Site Plan drawing establishing building envelopes is available for viewing in paper format at the Town of South Bruce Peninsula office during regular business hours and is titled:

Proposed Severance of a Part of Lot 21 Concession 5 West of the Bury Road.
Schedule “C”

to the Site Plan Control Agreement dated the 17th day of October, 2017 between Redhawk Construction Co. Ltd. and The Corporation of the Town of South Bruce Peninsula

Fees

1. Site Plan Control Application Fee $500.00

2. Legal Fees (Including Applicable Taxes) Actual Costs
   - Shall include but not be limited to the registration of the Site Plan Control Agreement on title
Schedule “D”

to the Site Plan Control Agreement dated the 17th day of October, 2017 between Redhawk Construction Co. Ltd. and The Corporation of the Town of South Bruce Peninsula

Special Conditions

All conditions and special conditions shall be at the sole expense of the Owner.

1. High voltage and high intensity barn standard night lighting shall be restricted from rear yards of future residences to maintain night sky conditions for wildlife active at night.

2. Heavy equipment use is restricted between May 15 and June 30 with work beginning no earlier than 7:30 am and completing work no later than 8:00 pm.

3. Meet the conditions imposed in the Federal Migratory Bird and Game Act at April 1-August 1 (SAAR 2009) by having a biologist confirm no loss of bird nests or young will take place.

4. Stockpiling of topsoil should be kept to a minimum in order to restrict the creation of a habitat for cavity nesting wildlife such as Belted Kingfisher.

5. Invoke the Native Planting Plan detailed below after the completion of construction phases. This timing would avoid possible trampling of the installed plant stock by machinery operating during construction.

5.1 Plant edges of septic clearings with native wildflowers useful to Monarch butterflies

The 10kg bag of mixed wildflower seed should contain the following local forbs with known value to the local wildlife on the site including the noted Species at Risk Monarch butterfly for future nectaring habitat creation.

Beebalm, Porcupine Sedge, New England Aster, Common Milkweed, Brown-eyed Susan, Elderberry

5.2 Native Planting Detail for FOD Warbler Guilds

Install a newly created forest edge of each building envelope extending 20m into forest:

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### Stock Quantity per Envelope

<table>
<thead>
<tr>
<th>Stock</th>
<th>Quantity per Envelope</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sugar Maple</td>
<td>5</td>
</tr>
<tr>
<td>Red-osier Dogwood</td>
<td>10</td>
</tr>
<tr>
<td>Tamarack</td>
<td>25</td>
</tr>
</tbody>
</table>

Note: plant stock is young of the year *seedling* and *sapling* stock with high survival rates vs. mature stock

5.3 Omit odiferous plantings around the residences (eg. Mock Orange, Lily of the Valley) since odor can impact wildlife scenting of mates.

5.4 Transplant identified flora before development (ie Indian Pipe on Lot 2, rear lots Maidenhair Spleenwort, Ginger and Sharp-lobed Hepatica).

6. A Stewardship Brochure provides additional guidelines. The Brochure is a two page document and is available for viewing in paper format at the Town of South Bruce Peninsula office during regular business hours and is titled:

SAAR Environmental
Proposed Severance of a Part of

Lot 21

Concession 5, West of the Bury Road

GEOGRAPHIC TOWNSHIP OF ALBEMARLE
TOWN OF SOUTH BRUCE PENINSULA
COUNTY OF BRUCE

Proposed Severance Area = 0.96± ha

Proposed Severance Area = 0.88± ha

Proposed Severance Area = 0.70± ha

Proposed Severance Area = 0.80± ha

Proposed Retained Area = 7.477± ha

Part I - Deposited Plan No. 3R-1820
**Eastern Massasauga Rattlesnake**

Habitat is not optimal for this rattlesnake however this portion of the Bruce Peninsula does support the Eastern Massasauga Rattlesnake. Interestingly, humans and snakes can live in harmony if a mutual respect for each other's surroundings is met. In fact, no one has died from a Massasauga bite in Ontario in more than 50 years! A few precautions are noted below for landowners. Make it a habit to use rubber boots or river shoes if children wish to access the southerly pond; snakes will bask during the day at shore then travel at dusk back upland into rocky forest edges.

Avoid removing any extensive rock piles as they have many different uses. Rock piles are favoured by the snake to cool down during warm weather, during the winter for hibernation, and at times to rest for the evening. Similar to the precautionary measures for the black bear, avoid leaving any garbage out overnight as scents and food are tempting to many wildlife species.

Know the location of your closest medical facility. The Ontario Ministry of Natural Resources and Forestry is the agency guiding rattlesnake conservation and they can be reached at 519 376 3860.

**Natural Heritage**

This region near Lake Huron shores is rich in biodiversity. Wildlife includes seasonal breeding for turtles, amphibians, snakes, fish, birds and small as well as large mammals.

A regional landscape view for wildlife movement across the lots was used to ensure there were no cumulative impacts of construction and human uses along Hea Road.

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SAAR Environmental Limited

571 Balmy Beach Road
Sarawak, Georgian Bluffs, ON N4K 5N4
519 374 9486
saar.environment@gmail.com
Night Sky

To maintain the quality of the night sky for wildlife active at night, and to conserve the star gazing opportunities for landowners as well, we discourage large barn style pole lighting that illuminates the forest and reduces the darkness.

Landowners instead are encouraged to use down-lighting: hooded light fixtures that direct light downward to illuminate paths to the front or back door and garden where appropriate. These downward directed path lights can ensure that the varied crepuscular and nocturnal wildlife such as owls, bats, and some salamander species continue to travel through the forest and make use of it.

Your Land

The mixed and deciduous forest canopy supports wide ranging warblers. Some have travelled from the Caribbean and South America, using the shrub and tree canopies to court and nest.

In particular, a pair of Black-throated Blue Warblers use these forests, and the associated Native Planting Plan gives direction on the type of shrubs and trees to plant at the building envelope new forest edge and into the forest up to 20 metres.

The wildlands also support ground nesting neo-tropical birds such as the Ovenbird, so clearing debris in the forest is discouraged. Fallen trees and brambles should be left in place as they often provide shelter for wildlife. Another ground nesting bird noted south of the lots near the open pond was the American Woodcock who also benefits from keeping the habitat in a natural state with dead fallen tree branches and leaf litter.

Planting Guidelines

Plantings should be installed after the construction phase to avoid damage and are directed by the Native Planting Plan. The species are all local with a known track record of surviving the four seasons. Although the type of forest edge plantings have already been determined, the type and quantity of plant species landowners install within their building envelope around their homes is individual choice. The Native Planting Plan identifies where building envelope forest edges should be planted to 20m into the forest. The Plan also includes the original EIS direction to omit planting any odiferous plants (e.g. Mock Orange, Lily of the Valley) since they can impact wildlife scenting of mates.

Identified flora must be transplanted before development (i.e. Indian Pipe on Lot 2 and patchy representation across the rear lots of Maidenhair Spleenwort, Ginger, Sharp-lobed Hepatica) for biodiversity maintenance.

Construction

To lessen the impact of noisy construction equipment, limit its use during may 15th – June 30th to no earlier than 7:30 AM and no later than 8:00 PM. This avoids the dusk and dawn sensitive periods for wildlife. Restrict long term stockpiling of topsoil for instance, to avoid cavity nesting wildlife taking up residence in the sand pile that needs to be used for fill. Meet the Federal Migratory Bird and Game Act by having a biologist confirm no active bird nests or young that cannot fly are in the way of construction.